

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**OPTUMRX, INC. AND EXPRESS SCRIPTS, INC.'S MOTION
FOR THE COURT TO HOLD THE AUGUST 30, 2023 STATUS CONFERENCE
ON THE RECORD WITH A COURT REPORTER**

In accordance with MDL Order 2804-69 (Special Master Appointment Order), Federal Rules of Civil Procedure 53 and 79, and 28 U.S.C. § 753, OptumRx and Express Scripts, Inc. move the Court to hold the upcoming August 30, 2023 status conference (12:00 p.m. ET) on the record before a court reporter.

DISCUSSION

“All proceedings . . . had in open court” must be recorded “unless the parties with the approval of the judge shall agree specifically to the contrary.” 28 U.S.C. § 753(b)(2). And “such other proceedings . . . as may be requested by any party to the proceeding” must be recorded. 28 U.S.C. § 753(b)(3); *see also United States v. Robinson*, 459 F.2d 1164, 1170 (D.C. Cir. 1972) (per curiam) (proceedings covered by the Act include “bench conferences” and “arguments of counsel”). Section 753(b)’s requirements are “mandatory,” and courts have a “duty” to meet them. *United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985); *Pittsburgh v. Simmons*, 729 F.2d 953, 955 (3d Cir. 1984) (“when counsel desires to go on the record, we can find no reason for a judge to decline to do so”).

Given the parties’ status updates to the Court on August 28, the August 30 conference will likely cover issues for which OptumRx and Express Scripts want to create a record, including the

PEC's proposed amendment of complaints and the bellwether-selection process. Accordingly, OptumRx and Express Scripts move the Court to hold the upcoming August 30, 2023 status conference (12:00 p.m. ET) on the record before a court reporter, with certified transcripts of the conference and any orders made during the conference entered on the docket.

August 29, 2023.

Respectfully submitted,

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Counsel for Express Scripts, Inc.

CERTIFICATE OF SERVICE

I certify that on August 29, 2023, a copy of the foregoing was served on counsel of record by filing the same with the Court's ECF system.

/s/ Brian D. Boone

Brian D. Boone